

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: StaceyAnn McFarlane-Ross	Team: Squad #1	CCRB Case #: 201808702	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 10/12/2018 10:30 PM	Location of Incident: [REDACTED]	Precinct: 18	18 Mo. SOL 4/12/2020	EO SOL 11/27/2020	
Date/Time CV Reported Sat, 10/13/2018 1:49 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 10/19/2018 12:50 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. CPT Robert Gault	00000	921362	PBMS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Premchan Rhambarose	04944	898367	PBMS

Officer(s)	Allegation	Investigator Recommendation
A.CPT Robert Gault	Abuse: Captain Robert Gault questioned § 87(2)(b) [REDACTED]	[REDACTED]
B.CPT Robert Gault	Abuse: Captain Robert Gault interfered with § 87(2)(b) [REDACTED]'s use of a recording device.	[REDACTED]
C.CPT Robert Gault	Abuse: Captain Robert Gault threatened to issue a summons to § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

On October 13, 2018, § 87(2)(b) filed this complaint via telephone with the NYPD Internal Affairs Bureau generating log number 2018-40557. On October 19, 2018, the complaint was received at the CCRB.

On October 12, 2018, at approximately 10:30 p.m., § 87(2)(b) was advertising for his job in front of § 87(2)(b) in Manhattan, when he was approached by a couple inquiring about ticket purchase. The couple attempted to purchase tickets from him. A few minutes later, Capt. Robert Gault and Sgt. Premchand Rhambarose, assigned to Patrol Boro Manhattan South, approached § 87(2)(b) and the customers. Capt. Gault informed the customers that § 87(2)(b) was doing something illegal and the customers left. Capt. Gault asked § 87(2)(b) for his identification (**Allegation A: Abuse of Authority**, § 87(2)(g) § 87(2)(b) gave Capt. Gault his identification and Capt. Gault wrote § 87(2)(b)'s information on a note pad before handing it back to § 87(2)(b). § 87(2)(b) took out his cell phone to record Capt. Gault and asked Capt. Gault if he could record him. Capt. Gault responded, "No, but you could take my name" (**Allegation B: Abuse of Authority**, § 87(2)(g) § 87(2)(b). After that, Capt. Gault told § 87(2)(b) that he reserved the right to come back to the location later and issue him a summons because he did not have his summons book (**Allegation C: Abuse of Authority**, § 87(2)(g) § 87(2)(b).

There is no video footage associated with this case.

Findings and Recommendations

Allegation (A) Abuse of Authority: Captain Robert Gault questioned § 87(2)(b)
Allegation (C) Abuse of Authority: Captain Robert Gault threatened to issue a summons to § 87(2)(b)

§ 87(2)(b) (Board Review 01, 02, 03, 05) testified that while he advertised for § 87(2)(b) in the Time Square area, two customers approached him and tried to purchase tickets from him. § 87(2)(b) informed the customers that he could not take money from them and they had to make the payments at the ticket booth. A few minutes later, Capt. Gault and Sgt. Rhambarose approached. Capt. Gault told the customers that § 87(2)(b) was doing something illegal. Capt. Gault told § 87(2)(b) that he saw money and § 87(2)(b) responded that he did not take the money. § 87(2)(b) explained that per the street vendor rules, ticket transactions cannot be conducted on the street before 11 pm. At that point, everyone left. Captain Gault and Sgt. Rhambarose walked away from § 87(2)(b) who followed them and asked Capt. Gault for his name and shield number so he could file a complaint against him. Capt. Gault responded by asking § 87(2)(b) for his identification. § 87(2)(b) complied and handed his identification to Capt. Gault. Capt. Gault then instructed § 87(2)(b) to follow him into the Forever 21 store. Once inside of the store, Capt. Gault wrote down § 87(2)(b)'s information and returned his identification. Capt. Gault did not issue a summons to § 87(2)(b) but told him that he reserved the right to come back to the location at a later time and issue him a summons because he did not have his summons book.

Capt. Gault (Board Review 04) testified that he observed § 87(2)(b) with two tourists who had money out conducting a ticket transaction. He then approached § 87(2)(b) and asked him what he was doing and § 87(2)(b) responded by showing his § 87(2)(b) license. Capt. Gault informed § 87(2)(b) and the tourists that the transaction would be unlawful due to the time restrictions for Time Square. The tourists left the location and Capt. Gault then asked § 87(2)(b) to step inside the Forever 21 store where he asked § 87(2)(b) for his identification. Capt. Gault wrote § 87(2)(b)'s information down, and again explained that his actions were a violation. However, Capt. Gault warned/admonished § 87(2)(b) and told him that he has the right to issue him a summons at a later time. Capt. Gault explained that he has a one-year statute of limitation to issue the summons to § 87(2)(b). He further explained that he does not carry a summons book and he did not want an officer who did not witness the incident to write a summons to § 87(2)(b).

Sgt. Rhambarose (Board Review 06) testified that he did know if Capt. Gault asked § 87(2)(b) for his identification as he was not paying attention to their conversation and was watching their surroundings. Sgt. Rhambarose was not sure if he heard Capt. Gault inform § 87(2)(b) that he could issue him a summons at a later time but stated that Capt. Gault warned and admonished § 87(2)(b) before they left.

Per *People v. DeBour*, 40 N.Y.2d 210, 224 (1976), officers need founded suspicion that criminal activity is afoot to ask and gain explanatory information (Board Review 10). Per the 34 Rules of the City of New York City (RCNY) 4-16 (e) (4) (ii), on any block within Times Square pedestrian plaza where there is a marked Designated Activity Zone (DAZ), no designated activities are permitted on the sidewalk adjacent to the block, except on times and days when licensed food and general vendors are permitted to vend on such sidewalks (Board Review 11).

§ 87(2)(b), § 87(2)(g)

Allegation (B) Abuse of Authority: Captain Robert Gault interfered with § 87(2)(b)'s use of a recording device.

§ 87(2)(b) stated that when Capt. Gault returned his identification, he took out his cell phone and approached Capt. Gault, getting within five inches of him. Capt. Gault told him to step back. § 87(2)(b) complied and asked whether he could record Capt. Gault. Capt. Gault replied, "No, but you could take down my name" and explained that captains do not have shield numbers. § 87(2)(b) wrote Capt. Gault's name in his cell phone.

Capt. Gault stated that § 87(2)(b) approached within inches of him with his cell phone trying to get a close up of his shield. Capt. Gault told § 87(2)(b) that he was not permitted to come so close to his body. He asked § 87(2)(b) why he was close and § 87(2)(b) informed him that he wanted his name and shield number. Capt. Gault verbally provided his name and told § 87(2)(b)

that captains do not have shield numbers. He did not tell § 87(2)(b) that he could not record him and he did not interfere with § 87(2)(b)'s recording device.

Sgt. Rhambarose testified that § 87(2)(b) approached Capt. Gault with less than an arm's length space between them. He heard Capt. Gault instruct § 87(2)(b) to step back because he was in his safety zone. § 87(2)(b) stepped approximately three to four feet back from Capt. Gault and continued to record. Sgt. Rhambarose did not remember hearing Capt. Gault tell § 87(2)(b) that he could not record.

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 08).
- Capt. Gault has been a member of service for 20 years and has been a subject in two CCRB complaint involving five allegations, none of which were substantiated. § 87(2)(b)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of March 8, 2019, the New York City Office of the comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 07). On May 29, 2019, an updated request was submitted and will be added to the case file upon receipt.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 09).

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date